

REMARKS

Summary of Office Action

Claims 1-68 were pending in this application. Claims 9-12, 22, 26, and 32-50 have been withdrawn from consideration as being drawn to a nonelected species.

The Examiner allowed claims 23-25, 27, 53-60, and 63-68.

Claim 15 was objected to for being dependent upon a rejected base claim, but was indicated to be allowable if rewritten in independent form including all the limitations of the base claim and any intervening claims.

Claims 61 and 62 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter that applicants regard as the invention. In particular, the Examiner said "the intermedullary canal" lacks a prior antecedent. Claims 61 and 62 were indicated, however, to be allowable if rewritten to overcome the § 112 rejections.

The Examiner finally rejected claims 1-3, 6, 7, 13, 14, and 18 under 35 U.S.C. § 102(b) as being anticipated by Paul et al. PCT Publication No. WO 99/38461 (hereinafter "Paul"). The Examiner also finally rejected claims 1, 2, 5, 6, and 18-20 under 35 U.S.C. § 102(e) as being anticipated by McKay U.S. Patent No. 6,039,762 (hereinafter "McKay"). And claims 1, 2, and 16-21 were finally rejected under 35 U.S.C. § 102(a) as being anticipated by Yonenobu et al. Japanese Patent No. JP2000175943 (hereinafter "Japan '943").

The Examiner finally rejected claims 4, 5, 8, 20, 21, 28-31, 51, and 52 under 35 U.S.C. § 103(a) as being obvious from Paul. The Examiner also finally rejected claims 3, 4, 7, 8, 13, 14, 16, 17, 21, 28-31, 51, and 52 under 35 U.S.C. § 103(a) as being obvious from

McKay. And claims 3-8, 13, 14, 21, 28-31, 51, and 52 were finally rejected under 35 U.S.C. § 103(a) as being obvious from Japan '943.

Claims 53-68 were objected to for a minor informality. In particular, the Examiner stated that "for use in the spinal column" in the preamble of independent claim 53 should be "for use in a patient's spinal column."

The specification was objected to as failing to provide proper antecedent basis for the claimed subject matter.

Summary of Applicants' Reply

Applicants appreciate the allowance of claims 23-25, 27, 53-60, and 63-68 and the indication that claims 15, 61, and 62 contain allowable subject matter.

Applicants have proposed canceling withdrawn claims 9-12, 22, 26, and 32-50 and claims 28-31, 51, and 52 without prejudice.

Applicants have also proposed amending claim 53 to overcome the objections by reciting "for use in a patient's spinal column" in the preamble. Accordingly, subject to entry of the amendments, applicants' respectfully request that the objections to claims 53-68 be withdrawn.

Applicants have proposed amending claims 61 and 62 to overcome the § 112 rejections by providing proper antecedence for "the intermedullary canal." Accordingly, subject to entry of the amendments, applicants' respectfully request that the rejections of claims 61 and 62 under 35 U.S.C. § 112, second paragraph, be withdrawn.

Claim 15 has been proposed for amendment to delete paragraph letters "(a)" and "(b)" because they are not necessary.

Claim 1 has been proposed for amendment to more clearly define applicants' invention. The proposed amendment of claim 1 also renders moot the objection to the specification.

No new matter has been added.

Reconsideration of this application in view of the proposed amendments and following remarks is respectfully requested.

Showing of Good and Sufficient Reasons  
Under 37 C.F.R. § 1.116(b)(3)

Applicants request amendment of this application, even though a final rejection has been issued. The proposed amendment of claim 15 is directed to a matter of form. The proposed amendment of claim 53 is directed to a minor informality, and the proposed amendments of claims 61, and 62 are directed to an antecedence issue. The proposed amendment of claim 1 adds limitations related to the allowable subject matter of claim 15 (see, e.g., applicants' specification, page 10, lines 12-17, and FIG. 1C). Thus, no additional search or consideration should be required. Accordingly, applicants respectfully request entry of the proposed amendments and consideration of the following remarks.

Rejections of Claims Under 35 U.S.C. § 102

Independent claim 1 and dependent claims 2, 3, 5-7, 13, 14, and 18-21 were rejected under 35 U.S.C. § 102 as being anticipated by Paul, McKay and/or Japan '943.

These rejections are respectfully traversed.

Independent claim 1, amended as proposed, defines a bone engaging portion having a single bone receiving channel that has a first depth relative to a first side region and a second depth relative to a second side region, the first and second depths having different

measurements, and the first and second side regions having substantially the same contour. These limitations are supported in the specification (e.g., page 10, lines 12-17) and in the drawings (e.g., FIGS. 1B and 1C).

Neither Paul, McKay, nor Japan '943 shows or suggests applicants' invention as defined in claim 1, amended as proposed. For example, instead of having a single bone receiving channel, McKay shows many channels, as the Examiner pointed out in the April 13, 2005 Final Office Action (page 10). Moreover, McKay's channels appear to have first and second depths having the same measurements. Furthermore, instead of having first and second side regions having substantially the same contour, the vertebral arch spacer of Japan '943 has first and second side regions 16, 15 of different contours. Accordingly, independent claim 1, amended as proposed, is neither anticipated by nor rendered obvious from Paul, McKay, or Japan '943.

Dependent claims 2, 3, 5-7, 13, 14, and 18-21, which depend either directly or indirectly from claim 1, should also no longer be anticipated by or rendered obvious from Paul, McKay, or Japan '943 (i.e., dependent claims are patentable if their independent claim is patentable).

Accordingly, applicants respectfully request that the rejections of claims 1-3, 5-7, 13, 14, and 18-21 under 35 U.S.C. § 102 be withdrawn.

Rejections of Claims Under 35 U.S.C. § 103(a)

Dependent claims 3-8, 13, 14, and 16-21 were rejected under 35 U.S.C. § 102 as being obvious from Paul, McKay, and/or Japan '943.

These rejections are respectfully traversed.

For at least the reasons discussed above with respect to independent claim 1, amended as proposed, claims 3-8, 13, 14, and 16-21, which depend either directly or indirectly from claim 1, should no longer be rendered obvious from Paul, McKay, and/or Japan '943 (i.e., dependent claims are patentable if their independent claim is patentable).

Accordingly, applicants respectfully request that the rejections of claims 3-8, 13, 14, and 16-21 under 35 U.S.C. § 103(a) be withdrawn.

Objection to Claim 15

Dependent claim 15 was objected to as being dependent upon a rejected base claim, but was indicated to be allowable if rewritten in independent form including all the limitations of the base claim and any intervening claims.

This objection is respectfully traversed.

For at least the reasons discussed above with respect to independent claim 1, amended as proposed, claim 15, which depends from claim 1, should no longer be objectionable.

Accordingly, applicants respectfully request that the objection to claim 15 be withdrawn.

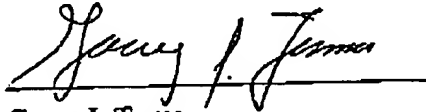
Conclusion

The foregoing demonstrates that claims 1-8, 13-21, 23-25, 27, and 53-68 are

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allowable. This application is therefore in condition for allowance. Reconsideration, entry of the proposed amendments, and allowance are accordingly respectfully requested.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Garry J. Tuma", is written over a horizontal line.

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